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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.B., a Person Coming Under the
Juvenile Court Law.

B207751
(Los Angeles County
Super. Ct. No. CK70839)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Jacqueline Lewis, Juvenile Court Referee. Dismissed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent Los Angeles County Department of
Children and Family Services.

Mitchell Keiter, under appointment by the Court of Appeal, for Respondent Father
David B.

The juvenile court dismissed a dependency petition alleging sexual abuse of the minor child J.B. by her father, respondent David B. (Father). After a trial on the merits, the court ruled that the Department of Children and Family Services (DCFS) did not meet its burden of proof. The court found that J.B.'s mother, appellant Maria S. (Mother), had coerced the child's testimony.

DCFS did not appeal from the dismissal of the petition. Instead, Mother challenges the court's ruling. The purported appeal must be dismissed for lack of jurisdiction because Mother has no standing to pursue it.

FACTS

On November 8, 2007, a family law court awarded Father custody of J.B. Soon afterward, Mother informed authorities that Father molested J.B. in 2004. Mother did not report the alleged abuse in 2004, though she admittedly knew about it. In fact, Mother sent J.B. to stay at Father's house more than a hundred times *after* the 2004 incident. During a police interview, Father stated that he touched J.B.'s vagina accidentally--then "tickled" the area--while dressing her after a bath. J.B. was four years old at the time.

On November 26, 2007, DCFS filed a petition alleging that (1) J.B. was exposed to violent altercations between Mother and Father; (2) Father sexually abused J.B. in October 2004; and (3) Mother knew of the abuse and failed to protect J.B. Father and Mother denied the allegations. Pretrial reports and investigations indicated that J.B.'s recounting of the alleged abuse was inconsistent.¹ Also, it seemed that Mother was coaching J.B.

A trial was conducted between December 2007 and April 2008. Initially, J.B. testified that Father once "touched my private and then he started to lick it." When trial resumed four months later, J.B. testified that Father never touched her. J.B. explained

¹ At various times, J.B. described digital penetration, oral copulation, or rape, or a combination of these. Her story varied as to whether Father was naked or clothed, or whether the incident occurred after a bath or a shower.

that Mother frequently said, “I want you to live with me so tell this to the people at court. Tell them . . . that your dad . . . touched you.” Mother threatened to hit J.B. if the child failed to testify that Father abused her. J.B. conceded that she lied when she told people that Father touched her.

The court found that DCFS did not meet its burden of proving the allegations in the petition. The court stated that J.B. has “credibility issues” after giving “multiple accounts of what happened.” Further, Mother engaged in “coercion” and does not have J.B.’s best interests at heart. The court concluded, “The family law court seems to have a good handle on this. This petition is dismissed in its entirety.”

DISCUSSION

The dismissal of a dependency petition, on the merits, constitutes an appealable judgment. (*In re Lauren P.* (1996) 44 Cal.App.4th 763, 767-768; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 195-198.) Mother contends that she has standing to pursue this appeal from the dismissal of the dependency petition, as a party aggrieved by the judgment. (Code Civ. Proc., § 902.) “One is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment.” (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) The interest must be immediate and substantial, and not nominal or remote. (*Id.* at p. 737.)

It is true that a mother has “a natural interest in obtaining the state’s protection for her daughter against future sexual abuse.” (*In re Lauren P.*, *supra*, 44 Cal.App.4th at p. 771.) In the context of a dependency proceeding, this interest is vindicated by the state, which initiates proceedings in juvenile court “under the theory of *parens patriae*, to protect a minor from abuse or neglect as defined by [Welfare and Institutions Code] section 300.” (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 736 (*Carissa G.*)). “[T]he mere fact a parent takes a position on a matter at issue in a juvenile dependency case that affects his or her child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling on it.” (*Ibid.* Accord, *In re Paul W.* (2007) 151 Cal.App.4th 37, 60.)

In *Carissa G.*, the child of divorced parents allegedly told her mother that her father touched her vagina during a visit. The mother filed a request with the family law court to limit the visitation of the father, who shared legal custody of the child with the mother. After the family law court declined to limit the father's visitation, the mother prompted an investigation by the county social services agency. This resulted in a dependency petition alleging sexual abuse by the father. A contested jurisdictional hearing was held, after which the juvenile court dismissed the petition due to the absence of "physical findings" and because the child's statements were inconsistent. (76 Cal.App.4th at pp. 733-734.)

The court in *Carissa G.* concluded that the mother lacked standing to challenge the juvenile court's decision. (76 Cal.App.4th at p. 733.) The court noted that "the juvenile court's dismissal of the petition did not alter minor's custody status. . . . Nor is a parent left without a remedy in this situation. Issues concerning custody and visitation can also be dealt with in a family law proceeding." (*Id.* at p. 736.) The court added, "The fact that the parties litigated father's alleged molestation of minor in the juvenile court does not bar mother from seeking relief in a family law proceeding." (*Ibid.*) "[T]he 'issues' before the family law court and juvenile court can never, in fact, be 'identical'" for purposes of res judicata "because of the important differences between the purposes and operations of the two courts, and the state's overriding concern for the protection of the children.'" (*Ibid.*)

Carissa G. rejects the reasoning in the *Lauren P.* case, wherein a mother was given standing to appeal the dismissal of a petition alleging sexual abuse by the father. The court wrote, "Mother concededly has a fundamental right to parent minor. But the juvenile court's dismissal of the petition did not impact that right," which is protected by the state acting in *parens patriae* on behalf of the child. (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 736. See also *In re Tomi C.* (1990) 218 Cal.App.3d 694 [finding no parental standing to appeal the dismissal of a dependency petition alleging sexual abuse].)

We agree with the court's decision in *Carissa G.* The juvenile court's dismissal of the petition did not alter J.B.'s custody status, as determined by the family law court. Mother's concerns about Father's custody can be dealt with in the family law court. (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 736.) Mother instigated an investigation by DCFS to overturn the family court's recent decision to award custody of J.B. to Father. Mother dredged up an alleged incident from 2004 immediately after the family court made its decision in 2007, and coerced J.B. to testify against Father by threatening to hit the child. In this situation, it is proper for the family law court to resolve familial disputes, now that the juvenile court has determined that there is insufficient evidence to support jurisdiction over J.B. Because DCFS chose not to challenge the dependency court's ruling, Mother has no standing to appeal.

DISPOSITION

The appeal is dismissed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.